IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1019 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANTBHAI MATHURBHAI CHAUHAN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ARPIT A KAPADIA for Appellant(s) : 1,
MR HL JANI, ADDL PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/02/2007

ORAL JUDGMENT

1. Present appeal is filed by the appellant-original accused being aggrieved by judgment and order dated 29.4.2006 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Godhra in Sessions Case No. 38 of 2006.

2. The learned Additional Sessions Judge was pleased to convict the accused for offence under Sections 376 and 506(2) of the Indian Penal Code.

The learned Additional Sessions Judge was pleased to award five years' rigorous imprisonment, fine of Rs.1,000/- and, in default, six months' simple imprisonment for offence under Section 376 of the Indian Penal Code. Whereas, for offence under Section 506(2) of the IPC, the learned Judge was pleased to award one year's rigorous imprisonment, fine of Rs.250/- and, in default, one month's simple imprisonment. The learned Judge has also ordered that the period for which the convict had remained in jail as an under-trial prisoner shall be given set of.

3. The case of the prosecution is that, on the day of the incident, i.e. 21.12.2005, at around 2.30 hours, victim Kailashben, wife of Rameshbhai Manilal Chauhan alongwith her niece Parvatiben Laxmanbhai had gone to the well of Udabhai Dhulabhai Chauhan. While she was returning from the well, keeping the pot on the head alongwith her niece, Jashwant Mathurbhai Chauhan-accused caught hold of her sari and told her that she should accompany him in the canal. The complainant told him that, she is married and the accused should not tell the victim such things. On hearing this, the accused got enraged and pulled the complainant in the canal. He also threatened the

complainant- victim and the niece of the victim to kill them if they raise any shouts. In the canal, the victim committed offence. The complaint was filed at Kaalol Police Station, which was registered as C.R. No. I-275 of 2005 for offence under Sections 376 and 506(2) of the Indian Penal Code. The offence was investigated by Police Sub Inspector Shri Dabhi. During the course of the investigation, the PSI sent the victim-complainant for medical examination. Her peticot was recovered under a panchnama. The panchnama of the scene of offence was drawn. The statements of the witnesses were recorded. The accused was arrested and sent for medical examination. The cloths of the accused were recovered under a panchnama. All the mudammal articles were sent to FSL, Vadodara for analysis.

4. After having found the sufficient evidence in the investigation, chargesheet was filed against the accused on 13.3.2006 in the Court of Judicial Magistrate First Class, Kaalol.

The accused from the judicial custody appeared before the Judicial Magistrate First Class, Kaalol. The learned J.M.F.C., after verifying that the accused has received the copies of the police papers of investigation, committed the case to the sessions on 27.3.2006 as offence under Sections 376 and 506(2) of the Indian Penal Code is triable by the Court of Sessions.

5. The prosecution has led the following evidence in support of its case:

Serial Nos.	Description of the documents	Exhibit Nos.
01	Medical report of the victim	07
02	Medical certificate of the victim	08
03	Report of sample of the victim	09
04	Medical Report of the accused	10
05	Medical certificate of the accused	11
06	Report of sample of the accused	12
07	Certificate of medical investigation of the victim	14
08	Report of the medical investigation	15
09	Recovery panchnama of peticot of the victim	17
10	Recovery panchnama of the cloths of the accused	20
11	Slip on the cloth	21
12	Panchnama of the scene of offence	24
13	Original complaint	31
14	Index	32
15	Dispatch note	33
16	Receipt of F.S.L	34
17	F.S.L. report	35

The prosecution has relied upon the depositions of the following witnesses:

PW Nos.	Name of the witnesses	Exhibit Nos.
01	Dr. Bijendrasinh Shrimalkhansinh	06
02	Dr. Subhash Hansraj Suryavanshi	13
03	Dalpatsinh Kalubhai Parmar	16

PW Nos.	Name of the witnesses	Exhibit Nos.
04	Ratansinh Saburbhai Parmar	18
05	Pratapsinh Magansinh Chauhan	19
06	Jashwantsinh Salsinh Chauhan	22
07	Pratapbhai Sukhabhai Chauhan	23
08	Ramanbhai Somabhai Chauhan	25
09	Kailashben Rameshbhai Manilal	26
10	Parvatiben Laxmanbhai Chauhan	27
11	Ramsinh Fulsinh Dabhi	30

6. The learned Additional Sessions Judge, on appreciating the evidence, is pleased to record the conviction and award the sentence as aforesaid.

7. The learned advocate for the appellant vehemently submitted that this is a case of 'no evidence' inasmuch as there is no independent witness examined and the witnesses who are examined by the prosecution have not supported the case of the prosecution.

8. The learned advocate for the appellant submitted that, in fact, the only evidence, which can be said to be against the present appellant-convict, is that of victim Kailashben, who is examined as PW 9 at Exh.26. The learned advocate submitted that, that is the solitary evidence against the appellant-accused, and even her niece who is said to have been with the victim at the time of incident, namely Parvatiben-Laxmanbhai Chauhan, who is examined as PW 10 Exh.27

aged 14 years on the day of the deposition, has not supported the case of the prosecution. The learned advocate vehemently submitted that the evidence of the victim ought not to have been relied upon to record the conviction.

9. Mr. H.L. Jani, learned Additional Public Prosecutor appearing for the State, invited attention of the Court to the relevant part of the judgment and order, wherein this aspect is discussed by the learned Judge (para 16 at page 11).

The learned APP submitted that, even remotely, it is not the case of the accused that he is falsely implicated because there was some enmity between the families. Not only that, the appellant-accused has not suggested that there was some illicit relation between the victim and the accused-appellant. Not only that, there is no cross-examination of the victim on this point. The learned APP submitted that taking into consideration the settled law on this point that, relying upon the sole evidence of the prosecutrix, if the same is found to be trustworthy and reliable, conviction can be recorded, the appeal be dismissed. The learned APP submitted that, in the present case, there is nothing on record to show that the learned Judge has erred in recording the conviction relying upon the evidence of the victim. He submitted that the evidence of the victim is absolutely natural, it narrates the occurrence of the event in a most reliable form. Even remotely, it does

not suffer from the vices, like exaggeration or false implication of anybody. The learned APP submitted that the Court has to mindful of the fact that the victim belongs to the downtrodden strata of the society; she has no reason to falsely implicate the appellant-accused in such a grave offence wherein her own character is at stake. The learned APP submitted that, even remotely, there is no suggestion from the appellant-accused as to why the victim selected him out of the whole village for implicating in such a serious offence.

10. The learned APP invited attention of the Court to para 23, wherein the learned Judge has discussed the submissions of the learned advocate appearing for the accused, wherein he went to the extent of submitting that the accused was not capable of performing the act constituting the offence. The learned Judge, after verifying the contents of Exh.11- medical report (certificate), has to record that, "the learned advocate does not seem to have studied the contents of Exh.11-medical evidence".

11. In view of the aforesaid discussion, this appeal is found to be without substance and hence, it is dismissed.

Sd/-

(RAVI R. TRIPATHI, J.)

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